(1870) 4 N. Y. 228, 231, "The whole title passes to the assignee and he is legally the real party in interest. . . . Even if he be liable to another as a debtor upon his contract for the collection he may thus make, it does not alter the case. The title to the specific claim is his."

There is another reason why the decision in the principal case is to be regretted. The rule that an action must be brought by the real party in interest applies to negotiable instruments as well as to other *choses* in action. Business men every day transfer notes or bills of exchange to others in order that the latter may collect them. To make the collector a mere agent often has disadvantages and the intention of the parties is to transfer title to the specific instrument and to rely on a collateral agreement for a disposition of the proceeds. This was permitted before the codes, Pomeroy, Code Rem. § 128, and is still in most of the States. Where the rule of the principal case obtains, however, an indorsee of negotiable paper, having legal title to the instrument, will be defeated if he has made any arrangement to give the proceeds to other parties. *Bostwick* v. *Bryant* (1887) 113 Ind. 448. Such a result is a hindrance to commercial transactions, disregards the intentions of the parties, and violates the spirit of the code provision which seeks to give the remedy to the person who possesses the right.

LIMITATION OF CARRIER'S LIABILITY AND FAILURE TO STOP IN TRANSITU—SHIPPER'S ASSENT TO TERMS. The New York Court of Appeals has recently held by a majority of five to two, that a clause in a shipper's express receipt, limiting the carrier's liability "in any case whatever" to fifty dollars, does not protect the carrier where the goods have been negligently delivered to the consignee in spite of an order to stop *in transitu*. *Rosenthal* v. *Weir* (1902) 63 N. E. 65, affirming 54 App. Div. 275. Though the point is a new one, neither the prevailing nor the dissenting opinion is very thoroughly reasoned; the decision, however, seems correct. The position of the majority of the court is that the stoppage *in transitu* put an end to the contract of carriage, giving rise to the relation of bailor and bailee, and that to this new relation the bill of lading had no reference. The first of these propositions is supported by authority. *Pontifex* v. *Midland Ry. Co.* (1877) L. R. 3 Q. B. D. 23. The second is a more open question and it is here that CULLEN, J., and PARKER, C. J., dissent. Whether exceptions in a bill of lading apply to the carrier's liability as a warehouseman before or after the journey is a question that has never arisen in New York, and could hardly arise in States where a limitation of liability is void in case of negligence, as the warehouseman is liable only for negligence. The only case found is a Kansas case, not noticed by the court, holding that the exceptions apply only to the contract of carriage and not to the warehouseman's liability. *Union Pac. R. Co.* v. *Moyer* (1888) 40 Kas. 184. In a somewhat similar case the Court of Appeals held that a clause in a bill of lading, exempting the carrier from liability for the negligence of the pilot,

master and mariners, applied only to negligence during the voyage and not to negligence while the duties of common carrier still subsisted, but after the ship had been brought to her dock. *Gleadell* v. *Thomson* (1874) 56 N. Y. 194. The present case, though not governed by that one, is in line with it, as well as with the many decisions which hold that a general clause of exemption will not be construed to cover liability for negligence unless a contrary intention is plainly expressed. All these results rest at bottom on the principle that the exempting clauses, being for the benefit of the carrier and inserted in contracts drawn up by the carrier, must be construed strictly.

A different line of reasoning, it is thought, would have led to the same conclusion. A carrier who delivers goods, whether negligently or otherwise, which have been stopped *in transitu*, is guilty of conversion. *Pontifex* v. *Midland Ry. Co., supra*; *Bloomingdale* v. *Memphis etc. R. Co.* (Tenn. 1881) 6 Lea, 616. And a carrier loses the benefit of an exception in a bill of lading if he is guilty of a misfeasance; as where he departs from the course agreed upon, *Maghee* v. *Camden & Amboy R. Co.* (1871) 45 N. Y. 514; or from the method of carriage agreed upon, *Pavitt* v. *Lehigh Valley R. Co.* (1893) 153 Pa. St. 302; or where he is guilty of conversion in delivering to the wrong person, *Erie Dispatch* v. *Johnson* (1889) 87 Tenn. 490; or even where he merely fails without excuse to deliver to a connecting carrier, *Rawson* v. *Holland* (1875) 59 N. Y. 611.

A second, though minor point in the case is worthy of notice. The judges who dissent from the reasoning of the majority concur in the judgment in favor of the plaintiffs on the ground that the trial court might have found that the plaintiffs were not notified at the time of shipment of the limitations in the receipt. This position is not referred to in the prevailing opinion. Had it been adopted by the whole court the holding would have confused a distinction which has been taken between two lines of New York cases. Under the decisions in that State, the consent of shippers is conclusively presumed to conditions and limitations in bills of lading and shippers' express-receipts, *Belger* v. *Dinsmore* (1872) 51 N. Y. 166; *Zimmer* v. *R. Co.* (1893) 137 N. Y. 460; while conditions in the baggage receipts of local transfer companies are not binding unless the taker knows at least, that the paper is a contract. *Grossman* v. *Dodd* (1892) 63 Hun 324; *Springer* v. *Westcott* (1901) 166 N. Y. 117. Whether or not the distinction is sound, it has seemed hitherto well established. See 1 COLUMBIA LAW REVIEW, 265. The view taken by CULLEN, J., and PARKER, C. J., however, requires actual assent to the terms of a receipt given to one shipping to a distance by express. *Springer* v. *Westcott, supra*, cited by CULLEN, J., does not warrant this position.

LIMITATIONS WITHIN WHICH A MORTGAGEE MAY STIPULATE FOR COLLATERAL ADVANTAGES. In the case of *Noakes and Company, Limited*, v. *Rice* [1902] A. C. 24, the House of Lords has rendered a decision that is of much importance. It determines with greater